# CITY & COUNTY

# OF SAN FRANCISCO



# BOARD OF APPEALS

# ANNUAL REPORT

# JULY 1, 2003-JUNE 30, 2004

**Prepared By:**

Robert H. Feldman, Executive Secretary

(415) 575-6880, fax (415 575-6885

February 5, 2005

CITY AND COUNTY OF SAN FRANCISCO

**BOARD OF APPEALS 2003-2004**

## COMMISSIONERS

Kathleen Harrington, President
Hisashi B. Sugaya, Vice President
Frank Fung, Commissioner
Randall Knox, Commissioner
Sabrina N. Saunders, Commissioner

## STAFF FOR 2003-2004

| | |
|---|---|
| Robert H. Feldman, Executive Secretary | (1575) |
| Catherine B. Johnson, Principal Clerk | (1408) |
| Victor F. Pacheco, Legal Assistant | (8173) |
| Marylee Phillips, Sr. Clerk Typist | (1426) |
| Paul C. Johnson, Sr. Clerk Typist (part-time as needed) | (1426) |
| Iris Davis, Sr. Clerk Typist (part-time as needed) | (1426) |
| Manuel Payes, Jr. Clerk (part-time as needed) | (1402) |

Claudine Woeber, Official Court Reporter (annual contract approved by Civil Service Commission, Purchaser, Administrative Officer and City Attorney) for 2003-2004.

## STATEMENT OF PURPOSE & MISSION

The Mission of the Board of Appeals, a quasi-judicial body created under the Charter of 1932, is the processing, hearing and deciding of appeals of departmental decisions involving the grant, denial, suspension, and revocation of permits, licenses, and other use entitlements by various commissions, departments, bureaus, agencies and officers of the City and County of San Francisco, including the granting and denial of variances and other determinations of the Zoning Administrator and discretionary review decisions and certain authorizations by the Planning Commission.

## AUTHORIZATION & PROCEDURES:

The jurisdiction of the Board is set forth in Section 4.106 of the Charter and the Board of Appeals' regulations are contained in the Business & Tax Regulations Code, Article 1, Permit Procedures, §§ 1-31, and under the Rules of the Board. The Charter, revised effective July 1, 1996, retained the Board, and changed its name from the Board of Permit Appeals to the Board of Appeals (§ 4.106). Specific rights of appeal to the Board are also set forth in the Building, Planning, Public Works, Police, Health, Plumbing and Electrical Codes. The following are examples of the matters under the jurisdiction of the Board:

a) building permits for new commercial and residential buildings
b) alteration permits for rear decks and room additions to residential buildings
c) demolition permits and determinations of unlawful demolitions
d) rear yard and parking variances, to legalize dwelling units and allow expansion of houses
e) place of entertainment/dance hall keeper, and after hours permits
f) taxicab medallions and taxi driver permits, and public convenience and necessity findings of the Taxi Commission which determine the number of taxicab medallions issued by the City.
g) restaurant permits
h) mechanical amusement device, billiard and massage establishment permits

i) sidewalk table and chair permits

j) business sign, awning, and billboard permits

k) street artist permits

l) sidewalk tree planting, removal and replacement orders and permits

m) public service kiosk and street furniture (restroom) permits

n) sidewalk merchandise display permits

o) downtown office building authorizations and exceptions

p) determinations and interpretations by the Zoning Administrator

q) penalties for work done without permits

Under the revised Charter of 1996 the Board lost jurisdiction over permits issued by the Recreation and Park Department and the Port Commission, as well as any building or demolition permits issued pursuant to a Conditional Use Authorization by the Planning Commission or the Board of Supervisors.

Twenty-nine public hearings were held this year, three Wednesdays a month beginning at 5:00 p.m. in Room 416 in City Hall, One Dr. Carlton B. Goodlett Place. At scheduled hearings appellants, permit holders, concerned citizens, and departments presented their arguments and responded to questions from the Board. Although many matters were resolved at an initial hearing, a sizeable number required further hearing, and in some cases, a site visit by Board members. Meetings lasted as late as midnight, with as many as nine or ten appeal hearings on an agenda.

The Board continued its practice of having the Official Court Reporter at the beginning of each meeting swear or affirm in all those intending to testify at any hearing that night, and to repeat this process during the evening as necessary to insure that all who testify are sworn or affirmed.

This fiscal year the Board processed 198 appeals. Many involved more than one department, and required the resolution of several issues requiring the Board to resolve several hundred issues.

The attached statistical breakdown indicates the nature and disposition of appeals decided during the fiscal year or pending at its end.

## PERFORMANCE GOALS

The goals for the Board have been to issue 95% of its final written decisions within thirty days of final action, and to schedule hearings within 45 days of filing. The Board has consistently met the goal of releasing final decisions within 30 days of final action, but has not been able to meet the goal of scheduling hearings within 45 days of filing. We remain concerned with the costly and complicated legal burdens placed upon it both by the nature of appeals, and the resolutions and litigation they generate, and by the Sunshine Ordinance, and will continue to strive to efficiently serve the public and reach our goals. Litigation results in the need for more documentation of cases and the adoption of substantial written findings and preparation of complete administrative records.

## BUDGET

The Departmental budget for FY 2003-2004 submitted by the Mayor and adopted by the Board of Supervisors was $456,756. This was basically the same as the previous year, with only minor adjustments. The Board of Appeals operated within its budget and no supplementals were required. Actual expenses were $418,007. Appeal fees accounted for the only revenue generated by operations which were projected at $52,000, and the actual amount collected was $42,550 which was deposited into the City's general fund. This revenue was supplemented by surcharges on certain permit applications issued by the Departments of Building Inspection, Planning, Public Works, Police, and Taxi Commission, which totaled $216,877, which was deposited into a special account used to support our operations. The surcharges ranged from $1.00 to $10.00, and are adjusted annually by the Controller and the Supervisors so that we are not a burden on the general fund.

## TELEVISION BROADCAST

Beginning in 2002, the proceedings of the Board are broadcast on SFGTV cable channel 26. Copies of the videotapes are available to the public from the station for a nominal fee.

## NARRATIVE OF YEAR'S ACTIVITIES

## INTRODUCTION:

Throughout the year the Board considered a variety of appeals as listed on pages 2 and 3. Each meeting agenda had, in addition to regular appeals, requests for rehearing, requests for jurisdiction, and the adoption of findings for cases already decided. The following narrative describes significant decisions and activities of the year.

## FIRST QUARTER: JULY 1 TO SEPT. 30, 2003

During the first meeting of the new fiscal year the Board granted two requests for rehearing and one request for jurisdiction (to allow a late filing of an appeal). The Board has allowed late filings in cases where the departments have failed to give parties proper notice of permit issuance. In two protest appeals an appellant contested the demolition of a small one-family house and construction of a two-family house on the site. The Board denied the appeals and upheld both permits on condition that the plans be revised to reduce the length of the proposed building by four feet on all three stories. This type of protest appeal was typical of appeals heard throughout the year, with issued permits being upheld on condition that plans be revised to meet the concerns of the appellants without denying the permit holder the opportunity to go forward with the basic proposal.

Also the first of several appeals concerning replacement of windows in architecturally significant buildings was heard. The Planning Department suspended similar permits during the year to seek compliance with guidelines from the Landsmarks Preservation Advisory Board, which are meant to preserve the architectural integrity of the existing façade. The Board urged the contractor to work

with the Planning Department to avoid problems in the future.

Also scheduled that night were two cases involving a recurring problem during the year: revocations of taxi medallions and driver permits by the Taxi Commission. As it has in previous years, the Board continued to press for a graduated penalty program to replace the drastic revocation actions, and to encourage compliance with City regulations requiring driving by medallion holders.

Later in July the Board heard a protest appeal by a resident trying to save a tree slated for removal and replacement. Tree appeals generate emotional responses from parties and from neighbors, who consider street trees an important part of a neighborhood deserving of protection. Permit holders often feel equally strongly that they should be allowed to remove trees with roots that break their sidewalk and clog their sewer connections, resulting in significant costs. Testimony from foresters and arborists added an academic flavor to the proceedings.

In August, an appeal of a Planning Commission denial of an alteration permit to merge two dwelling units raised unit merger issues regulated by Commission guidelines meant to preserve affordable rental units. This and several other cases involved buildings in the most expensive parts of the City and young families trying merge units to create large one-family houses in densely built-up neighborhoods. These cases were sometimes complicated by evictions of tenants, raising issues regulated by the Rent Board and civil law. The Board tried to reach equitable decisions preserving rights of owners and tenants.

In September, an appeal of a Zoning Administrator determination regarding the lawful use of an apartment house as five units raised issues of City records, reports and current zoning density standards as owners tried to establish the legality of existing units created before density and parking standards were enacted. The Board had tough decisions to make balancing the integrity of zoning use regulations with the need to preserve existing apartments, which may have met the simpler Codes of the past but do not meet the current Codes. Through the year cases of apartments created for servants or building managers whose owners now want to put them on the rental market came up and the Board tried diligently to allow continued residential use, sometimes asking Dept. of Building Inspection staff to make site visits to determine if units were safe and

habitable before it allowed their continued residential use.

## SECOND QUARTER: OCT. 1 TO DEC. 31, 2003

In October, one of several appeals involving Taxi Commission decisions and addition of names of children to medallions held by deceased parents came before the Board. The history of taxi regulations and family narratives were described at length and writs were filed by the losing parties. An aging driver force raises issues of ADA requirements to accommodate the disabled, with cases colored by the down-turn in the tourist industry putting great pressure on the cab companies.

Also in October, the Board considered an appeal by the Telegraph Hill Dwellers of a proposed nine-unit mixed-use building at Lombard and Columbus in North Beach. Their decision upholding the permit was followed by Supervisors' action aimed at condemning the property for purchase by the City for use as a park. The controversy went on for months and the project remained un-built at the end of the year. During November and December, the Board heard two dozen appeals of revocations of various Police permits for failure to pay the annual fees as required by the Code. Permits for massage establishments, pushcarts, billiard parlors, tow cars and arcades were some of the permits involved.

## THIRD QUARTER: JANUARY 1 TO MARCH 30, 2004

During January, the Board upheld a determination that a multi-family residential project in the former Golden Gateway Development Area does not require a new conditional use authorization from the Planning Commission. The opposition objected to the loss of recreation facilities and tennis courts on the site, which have served residents in the area for many years and testimony was impassioned.

In February the Board held its annual election of officers and Kathleen Harrington and Hisashi Sugaya were elected President and Vice President, respectively. At the same meeting, Planning staff presented the revised Residential Design Guidelines adopted the Planning Commission, which

provide criteria for evaluation of harmony of new residential construction as required by Prop. M, Section 101.1, of the Planning Code. The Director of the DBI has toughened his enforcement of demolition permit requirements, which resulted in difficult decisions for the Board as half completed projects were halted for lack of proper permits. An appeal of such a matter had its initial hearing in February and was continued several times, and continued pending into the new year while the owner struggled to meet DBI requirements without removing sheetrock for inspections and submittal of adequate plans, with the Board urging the parties to reach an agreement and end the impasse.

Later in February several Taxi Commission revocations of cab drivers' permits presented the Board with having to decide appeals involving driver's ability to earn a living balanced against the needs of tourists and residents.

In an especially difficult case, the Board upheld a Planning Commission denial of an alteration permit for an addition to a two-unit building on San Jose Avenue opposed by the tenant who battled to keep the unit he had occupied for many years. Testimony from tenants' rights activists supported the tenant, and the Board continued the matter several times in the hope the parties could reach an agreement. In the end the parties could not reach an agreement and the appeal was finally rejected and the denial upheld on a split vote.

Throughout the year appeals by tenants seeking to prevent renovations and additions that would result in their eviction were a staple with the Board always attempting not to encroach on the Rent Board's jurisdiction over landlord-tenant matters, while appropriately limiting themselves to their jurisdiction over permits and zoning variances.

In mid-February the Board held a hearing on and adopted the proposed budget for FY2004-2005 with revenue from appeal fees and permit application surcharges, projecting reliance on only $26,000 from the general fund. There was no significant change from the previous year.

In March the Board found itself dealing with immigrant labor issues in an appeal of an office alteration to provide space for an immigrant rights organization being opposed by residential

neighbors opposed to laborers using the area for pick-ups for day labor.

## FOURTH QUARTER: APRIL 1 TO JUNE 30, 2004

Taxi medallion revocations returned to the calendar in April, with the Board in most cases overruling revocations and imposing suspensions to support enforcement efforts of the Taxi Commission and the Police Department Taxi Detail while allowing holders some income to support families. Again the Board urged the Taxi Commission to seek amendments to taxi regulations that account for aging and disability of drivers and owners who must meet driving requirements to keep their medallions.

In May, the Board began consideration of an Incompatible Activities Statement required of all boards and commissions under the Campaign and Governmental Code, which remained pending at the end of the year. The statement is to guide commissioners and staff in use of City equipment and outside employment that is inappropriate in light of official duties and public employment.

In June a case involving public toilets installed by a French firm in exchange for advertising kiosks came up with appeals by people opposing placement of toilet facilities on sidewalks in front of residential and commercial buildings. Merchant groups supported certain ones to accommodate tourists and customers who otherwise had no facilities except those in businesses, and with neighbors opposing because of fear of facilities being used for criminal purposes, prostitution and drug dealing. Again the Board encouraged parties to meet and discuss to reach agreement on an appropriate location that would serve all parties.

Throughout the year appeals of dwelling unit mergers, street tree removals, housing replacement demolitions, fence and retaining walls, horizontal and vertical additions to houses, and decks and stairs were heard every month, with matters continually complicated by inconsistencies in the Planning and Building Codes on apartments, housekeeping units and neighbor notification requirements. The repetition of problems indicates the need for amendments to the Codes to make regulations consistent and mutually supportive so that the public and businesses can deal with their projects and appeals in a reasonable and straight-forward, logical manner.

Commissioner Harrington provided strong leadership and was particularly effective in managing long calendars. She expressed great interest in appeals involving small businesses, strongly supported owners' rights. Commissioner Shoemaker took the lead in consideration of appeals involving multi-unit projects and affordable housing. Commissioner Sugaya demonstrated great interest in architectural design issues and expertise in architectural conservation, seeking to mitigate the negative effects of projects on surrounding neighbors. Commissioner Saunders continued as in past years to take special interest in appeals involving evictions of single parent families and loss of employment.

Litigation: During the year several Board decisions were challenged in Superior Court and the Board was effectively represented by the City Attorney's office.

Departmental representatives at public hearings: The City Attorney was represented by Deputy City Attorney Catharine Barnes. The Planning Department by Lawrence Badiner, Zoning Administrator, backed up by Senior Planners Craig Nikitas, Jonas Ionin,, and Julian Banales; the Department of Building Inspection by Chief Building Inspector Laurence Kornfield, assisted by Senior Building Inspector Leo McFadden; the Police Department by Sgt. William Coggan of the Department's Legal Division; the Taxi Commission by Executive Director Naomi Little; she was supported by Inspector Farrell Suslow and Sgt. Vince Simpson of the Police Department's Taxi Detail; and Acting Urban Forester Tony Wolcott represented the Dept. Of Public Works Bureau of Urban Forestry.

Staff: Catherine Johnson, Office Manager, performed admirably as she trained and supervised staff, attended hearings in the absence of the Executive Secretary, coordinated the appeals process, as well as meeting the requirements of the Mayor's Budget Office, the Controller, the Purchaser, DHR, DTIS, and other required duties. Victor Pacheco, Legal Assistant, attended all Board meetings as clerk and timekeeper, drafted and maintained Board calendars and minutes, prepared all rescheduling notices, notices of appeal, issued final notices of decision, supervised all communications with parties, created and amended forms/templates to assist the public, kept the departmental website up to date, and supervised the Senior Clerk Typist and Junior Clerk, always

with great professionalism and a sense of humor. Marylee Phillips provided reception, typing and in-take services, while Iris Davis, Chris Johnson, Elizabeth Rudzinski and Manuel Payes served admirably in various clerical roles on a part-time basis. Official Court Reporter Claudine Woeber successfully completed her contract obligations and was rehired for the new year.

It remains the intention of the Board and its staff to continue to strive for excellence in serving the public, with strict attention to all legal requirements, and with compassion for those involved in the process.

Prepared by

Robert H. Feldman,
Executive Secretary

cc: Hon. Gavin Newsom, Mayor
Commissioners of the Board of Appeals (5)
Public Library (2 copies)
Clerk of the Board of Supervisors

This report will be posted on the Board of Appeals' website, www.sfgov.org/boa, pursuant to Ordinance no. 14-03.

ANNUAL REPORT
BOARD OF APPEALS

## COMPARATIVE STATISTICAL ANALYSIS OF APPEALS FILED FOR FISCAL YEARS
2002 TO 2003
2003 TO 2004

| | 02/03 | | 03/04 | |
|---|---|---|---|---|
| TOTAL NUMBER OF APPEALS FILED | 242 | | 202 | |
| Department of Building Inspection | 140 | 57.9% | 103 | 51.0% |
| Department of Public Works | 6 | 2.5% | 4 | 2.0% |
| Planning Department | 65 | 26.9% | 43 | 21.3% |
| Police Department | 8 | 3.3% | 8 | 4.0% |
| Fire Department | 0 | 0.0% | 0 | 0.0% |
| Health Department | 1 | 0.4% | 0 | 0.0% |
| Taxi Commission | 17 | 7.0% | 34 | 16.8% |
| Arts Commission | 0 | 0.0% | 1 | 0.5% |
| Housing Inspection Division | 0 | 0.0% | 0 | 0.0% |
| Interdepartmental Staff Committee on Traffic and Transportation | 0 | 0.0% | 0 | 0.0% |
| Urban Foresty | 5 | 2.1% | 9 | 4.5% |
| | 242 | 100.0% | 202 | 100.0% |

| | | |
|---|---|---|
| Overruled with conditions * | 65 | 49 |
| Overruled without conditions | 20 | 31 |
| Concurred | 103 | 92 |
| Withdrawn | 54 | 30 |
| | 242 | 202 |

DEPARTMENT OF BUILDING INSPECTION

| | | |
|---|---|---|
| Overruled with conditions * | 33 | 10 |
| Overruled without conditions | 4 | 16 |
| Concurred | 67 | 58 |
| Withdrawn | 36 | 19 |
| | 140 | 103 |

COMPARATIVE ANNUAL REPORT FISCAL YEARS 2002 TO 2003 AND 2003 TO 2004

| DEPARTMENT OF PUBLIC WORKS | '02/03 | '03/04 |
|---|---|---|
| Overruled with conditions | 2 | 0 |
| Overruled without conditions | 2 | 0 |
| Concurred | 2 | 4 |
| Withdrawn | 0 | 0 |
| | 6 | 4 |

| PLANNING DEPARTMENT | | |
|---|---|---|
| Overruled with conditions * | 11 | 1 |
| Overruled without conditions | 14 | 13 |
| Concurred | 25 | 18 |
| Withdrawn | 15 | 11 |
| | 65 | 43 |

| POLICE DEPARTMENT | | |
|---|---|---|
| Overruled with conditions * | 4 | 8 |
| Overruled without conditions | 0 | 0 |
| Concurred | 2 | 0 |
| Withdrawn | 2 | 0 |
| | 8 | 8 |

| FIRE DEPARTMENT | | |
|---|---|---|
| Overruled with conditions * | 0 | 0 |
| Overruled without conditions | 0 | 0 |
| Concurred | 0 | 0 |
| Withdrawn | 0 | 0 |
| | 0 | 0 |

| HEALTH DEPARTMENT | | |
|---|---|---|
| Overruled with conditions * | 0 | 0 |
| Overruled without conditions | 0 | 0 |
| Concurred | 0 | 0 |
| Withdrawn | 1 | 0 |
| | 1 | 0 |

COMPARATIVE ANNUAL REPORT FISCAL YEAR 2002 TO 2003 AND 2003 TO 2004

TAXI COMMISSION

| | | |
|---|---|---|
| Overruled with conditions * | 11 | 26 |
| Overruled without conditions | 0 | 2 |
| Concurred | 6 | 6 |
| Withdrawn | 0 | 0 |
| | 17 | 34 |

ARTS COMMISSION

| | | |
|---|---|---|
| Overruled with conditions* | 0 | 1 |
| Overruled without conditions | 0 | 0 |
| Concurred | 0 | 0 |
| Withdrawn | 0 | 0 |
| | 0 | 1 |

DIVISION OF APARTMENT AND HOTEL INSPECTION

| | | |
|---|---|---|
| Overruled with conditions * | 0 | 0 |
| Overruled without conditions | 0 | 0 |
| Concurred | 0 | 0 |
| Withdrawn | 0 | 0 |
| | 0 | 0 |

INTERDEPARTMENT STAFF COMMITTEE ON TRAFFIC AND TRANSPORTATION

| | | |
|---|---|---|
| Overruled with conditions * | 0 | 0 |
| Overruled without conditions | 0 | 0 |
| Concurred | 0 | 0 |
| Withdrawn | 0 | 0 |
| | 0 | 0 |

URBAN FORESTRY

| | | |
|---|---|---|
| Overruled with conditions * | 4 | 3 |
| Overruled without conditions | 0 | 0 |
| Concurred | 1 | 6 |
| Withdrawn | 0 | 0 |
| | 5 | 9 |

COMPARATIVE ANNUAL REPORT FISCAL YEARS 2002TO 2003 AND 2003 TO 2004

OTHER ACTIONS

| | '02/03 | '03/04 |
|---|---|---|
| Rehearings Withdrawn | 0 | 1 |
| Rehearings Granted | 4 | 6 |
| Rehearings Denied | 22 | 12 |
| | 26 | 19 |
| Further Hearings | 16 | 23 |
| Site Inspections | 0 | 0 |
| Court Remands | 6 | 2 |
| | 22 | 25 |
| TOTAL OTHER ACTIONS | 48 | 48 |
| | '02/03 | |
| Matters Pending | 36 ** | 23 *** |
| Appeals Not Accepted (Lack of Jurisdiction) | 17 | 15 |
| Appeals Accepted but Board had No Jurisdiction | 9 | 3 |
| Appeals Accepted (Jurisdiction granted) | 6 | 12 |
| Appeals Continued at Hearings | 16 | 23 |
| | 84 | 85 |
| Call of the Chair | 15 | 6 |

*NOTE: A majority of appeals in this category are actually concurrences with the Department with only minor conditions. For example, any change in the amount of a penalty assessed for work done without a permit renders that decision in the "Overruled with conditions" column.

**NOTE: Additional appeals processed but no decision released during the fiscal year 2002-2003

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# CITY & COUNTY
# OF SAN FRANCISCO

# BOARD OF APPEALS
# ANNUAL REPORT
# JULY 1, 2004-JUNE 30, 2005



**Prepared By:**

Robert H. Feldman, Executive Secretary

(415) 575-6880, fax (415) 575-6885

Robert.Feldman@sfgov.org

February 28, 2006

CITY AND COUNTY OF SAN FRANCISCO

# BOARD OF APPEALS 2004-2005

GAVIN NEWSOM, MAYOR

AARON PESKIN, PRESIDENT OF BOARD OF SUPERVISORS

## COMMISSIONERS

Kathleen Harrington, President (M) (Deceased Jan. 23, 2005)

Hisashi B. Sugaya, President (S) (Elected April 20, 2005)

Frank Fung, Commissioner (M)

Randall Knox, Commissioner (S)

Sabrina N. Saunders, Commissioner (M)

Michael Garcia, Commissioner (M)

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## FIRST QUARTER: JULY 1 TO SEPT. 30, 2004

The year began with Commissioner Kathleen Harrington presiding as President, Commissioner Hisashi Sugaya, as Vice-President and Commissioners Arnold Chin, Sabrina Saunders and Douglas Shoemaker.

Throughout the year the Board heard and decided the usual variety of building, planning, police, taxi, entertainment permit, termination appeals and variance appeals. These are highlights of the appeals and hearings.

During July the board saw the conclusion of an appeal of an illegal demolition appeal for an alteration

on a single-family house on Junipero Serra Boulevard. After a through hearing in May the appellant substantially revised his plans, making them acceptable to neighboring residents and the departments and within the scale of surrounding houses; he then withdrew his appeal.

Our first appeal of an Entertainment Commission action imposing stringent conditions on a place of Entertainment permit for a bar on Cortland Avenue resulted in a long hearing and conditions as restrictive and finely tuned to the complaints of neighbors who feared excessive noise and late night disturbances.

Later in the month the Board faced the difficulty of crafting a sound decision to allow a fund raising business in a residential district with conditions imposed to insure the operation will meet the codes and not be disruptive to the neighborhood.

On July 28, the Board presented former Commissioner Doug Shoemaker with a plaque thanking him for his service on the Board from 2001 to June 30, 2004.

In September the Board upheld a Planning Commission denial of a permit to merge a two-family house into a single-family house for violating the Commission's unit merger policies. The Board's handling of unit merger appeals remains a sensitive issue for the Planning Commission and it continues to study the policies and to urge the Board to support their denials of such applications.

## SECOND QUARTER: OCT. 1 TO DEC. 31, 2004

During November the Board upheld with conditions on a rehearing of a variance granted to allow the

enclosure of two open decks at the rear of a two-family home. As in several cases during the year the Board asked that a representative of the Department of Building Inspection make a site visit and report back on any hazardous conditions and to ascertain whether a seismic upgrade had been done to the building as claimed by a party. After much testimony and several hearings the Board upheld the permit with restrictions on the depth of the building to protect neighbors from unjustified obstructions into the yard.

In mid November the Board upheld a Planning Commission denial of an alteration of a two-unit house that would result in the eviction of a long-time tenant on the ground the proposal was out of scale and not in harmony with the neighborhood and the Commission's Residential Design Guidelines.

During December the Board decided an appeal of the denial of a DPW sidewalk merchandise display permit, one of several such cases during the year. These appeals sometimes turn on competition between shopkeepers and on ADA and DPW requirements to keep sidewalks open for pedestrians, especially the disabled in wheelchairs. These are difficult decisions for the commissioners who seeks to support small businesses and be sensitive to the needs of those in chairs and mothers with strollers.

The appeal of a determination regarding conversion of a former ballroom on Sutter to commercial space for a silk screen studio deemed an office use by Planning required vigorous analysis of Planning Code provisions to allow for preservation of the ballroom and temporary use by the artisans.

The year ended with a contentious appeal of the expansion of a six-unit building on Green fought by a neighborhood association to keep the building in harmony and character with development on Russian Hill.

Throughout the year there were appeals by associations in Westwood, St. Mary's, Country Club Acres, Telegraph Hill, Pacific Heights all struggling to keep house additions in scale and within the Planning Commission's Residential Design Guideline.

## THIRD QUARTER: JANUARY 1 TO MARCH 30, 2005

During January the Board had a hearing and reviewed an incompatible activities policy statement required to be adopted by the Ethics commission and after a hearing and review, amended a staff draft and sent it to the City Attorney for final preparation for adoption. This was one of several guidelines and policy statements required by Ethics, Sunshine Ordinance Task Force, Human Right Commission and the City Attorney to keep Commission and departments in compliance with clean government statutes and ordinances.

Later in January the Board decided appeals of zoning determinations about property in the Mission and on lower Nob Hill, which had been approved by the Planning Commission and which plans were objected to for lack of compliance with Commission action. While the Board has no jurisdiction over building and demolition permits approved pursuant to conditional use authorizations and environmental actions, it does have jurisdiction over Zoning Administrator determinations and variances concerned with such projects making for complex appeals. The Board supported housing proposals throughout the year.

President Kathleen Harrington passed away unexpectedly on January 23, 2005, having made a deep impression with her energy, humor and compassion for the rights of families and small businesses and a skepticism for government regulations and restrictions. This was a great loss to the Board and City.

Vice President Hisashi Sugaya took over as acting president until election as President with Sabrina Saunder as Vice President at the meeting on April 28, 2005.

On March 22, 2005, Michael Garcia was appointed Commissioner and began his work with the Board on April 13, 2005, when the Board was fully constituted and with elected officers.

## FOURTH QUARTER: APRIL 1 TO JUNE 30, 2005

In April the Board had decided a determination appeal about the validity of a certificate of appropriateness from the Landmarks Preservation Advisory Board.

May saw hearings on appeals involving a shoe store on Haight Street and a replacement building for a fire damaged house on 19th Avenue, both of which took several hearings over several months before being in decided, the elevator penthouse allowed on the store and with revised plans for the house.

In May there were a series of appeals on 45-day suspensions of tobacco products sales permits by the Department of Public Heath for sales of tobacco to minors. The Board reduced suspensions

where it was deemed appropriate and urged the Department to review their penalty policy in light of the effects on small businesses and the effectiveness of the program.

On June 1, 2005 the Board heard protests by seven neighbors of a project to add a story and remodel a one-family house on Noriega Street. The final decision came on June 29, 2005 after plans had been revised to the Board's satisfaction to ameliorate the effects of the project on the neighbors.

At the last meeting of the year, June 29, 2005 the Board decided ten tobacco sales suspension appeals as well as the seven Noriega cases and a window replacement appeal that resulted in a decision with conditions to ease the burden on the owner while bringing the window treatment into close compliance with the Planning Department's guidelines to keep replacement windows in harmony with existing façades on architecturally significant buildings.

The year ended with twenty cases on the indefinite calendar to be decided at a later time.

While President Harrington provided strong leadership and was particularly effective in managing long calendars. Commissioner Shoemaker took the lead in consideration of appeals involving multi-unit projects and affordable housing. Commissioner Sugaya demonstrated great interest in architectural design issues and used his expertise in architectural preservation, seeking to mitigate the negative effects of projects on surrounding neighbors. Commissioner Saunders continued as in past years to take special interest in appeals involving evictions of single parent families and loss of employment. Commissioner Garcia expressed special interest in cases with ethics and economics

issues.

There were no rules amendments by the Board nor ordinances enacted by the Supervisors that significantly affected the Board this year.

Litigation: During the year several Board decisions were challenged in Superior Court and the Board was successfully represented by the City Attorney's office.

Departmental representatives at public hearings: The City Attorney was represented by Deputy City Attorney Catharine Barnes. The Planning Department by Lawrence Badiner, Zoning Administrator, backed up by Senior Planners Craig Nikitas, Jonas Ionin, and Julian Banales; the Department of Building Inspection by Chief Building Inspector Laurence Kornfield, assisted by Senior Building Inspector Leo McFadden; the Police Department by Sgt. William Coggan of the Department's Legal Division; the Taxi Commission by Executive Director Naomi Little; she was supported by Inspector Farrell Suslow and Sgt. Vince Simpson of the Police Department's Taxi Detail; and Urban Forester Carla Short represented the Dept. Of Public Works Bureau of Urban Forestry and John Kwong the Bureau of Street use and mapping.

Staff: Catherine Johnson, Office Manager and Chef Clerk performed admirably as she trained and supervised staff, attended hearings in the absence of the Executive Secretary, coordinated the appeals process, as well as meeting the requirements of the Mayor's Budget Office, the Controller, the Purchaser, DHR, DTIS, and other duties. Victor Pacheco, Legal Assistant, attended all Board meetings as clerk and timekeeper and maintained Board calendars and minutes, prepared all rescheduling notices, notices of appeal, issued final notices of decision, supervised communications

with parties, created and amended forms/templates to assist the public, kept the departmental website up to date, and supervised the Senior Clerk Typist and Junior Clerk, always with great professionalism rapport with parties and a sense of humor. Marylee Phillips provided very responsive reception, typing and in-take services, while Iris Davis, Chris Johnson, Elizabeth Rudzinski and Manuel Payes served admirably in various clerical roles on a part-time basis. Official Court Reporter Claudine Woeber successfully completed her contract obligations and was rehired for the new year.

It remains the intention of the Board and its staff to continue to strive for excellence in serving the public, departments and parties with strict attention to all legal requirements, and with compassion for those involved in the process.

Attachment with Statistics.

Prepared by

Robert H. Feldman,
Executive Secretary

cc: Hon. Gavin Newsom, Mayor
Aaron Peskin, President of the Board of Supervision
Commissioners of the Board of Appeals (5)
Public Library (2 copies)
Clerk of the Board of Supervisors

This report will be posted on the Board of Appeals' website, www.sfgov.org/boa, pursuant to Ordinance no. 14-03.

## COMPARATIVE STATISTICAL ANALYSIS OF APPEALS FILED FOR FISCAL YEARS 2003 TO 2004 2004 TO 2005

| | 03/04 | | 04/05 | |
|---|---|---|---|---|
| **TOTAL NUMBER OF APPEALS FILED** | 202 | | 300 | |
| Department of Building Inspection | 103 | 51.0% | 190 | 63.3% |
| Department of Public Works | 4 | 2.0% | 1 | 0.3% |
| Planning Department | 43 | 21.3% | 73 | 24.3% |
| Police Department | 8 | 4.0% | 1 | 0.3% |
| Fire Department | 0 | 0.0% | 0 | 0.0% |
| Health Department | 0 | 0.0% | 18 | 6.0% |
| Taxi Commission | 34 | 16.8% | 8 | 2.7% |
| Art Commission | 1 | 0.5% | 0 | 0.0% |
| Housing Inspection Division | 0 | 0.0% | 0 | 0.0% |
| Entertainment Commission | 0 | 0.0% | 6 | 2.0% |
| Urban Forestry | 9 | 4.5% | 3 | 1.0% |
| *(BUF) Bureau of Urban Forestry | | | | |
| **Total:** | 202 | 100.0% | 300 | 100.0% |

| | | |
|---|---|---|
| Overruled with conditions * | 49 | 67 |
| Overruled without conditions | 31 | 26 |
| Concurred | 92 | 139 |
| Withdrawn | 30 | 68 |
| **Total:** | 202 | 300 |

DEPARTMENT OF BUILDING INSPECTION

| | | |
|---|---|---|
| Overruled with conditions | 10 | 29 |
| Overruled without conditions | 16 | 9 |
| Concurred | 58 | 104 |
| Withdrawn | 19 | 48 |
| **Total:** | 103 | 190 |

## COMPARTIVE ANNUAL REPORT FISCAL YEARS 2003 TO 2004 AND 2004 TO 2005

| DEPARTMENT OF PUBLIC WORKS | | 03/04 | 04/05 |
|---|---|---|---|
| Overruled with conditions * | | 0 | 0 |
| Overruled without conditions | | 0 | 0 |
| Concurred | | 4 | 1 |
| Withdrawn | | 0 | 0 |
| | **Total:** | 4 | 1 |

| PLANNING DEPARTMENT | | | |
|---|---|---|---|
| Overruled with conditions * | | 1 | 17 |
| Overruled without conditions | | 13 | 15 |
| Concurred | | 18 | 26 |
| Withdrawn | | 11 | 15 |
| | **Total:** | 43 | 73 |

| POLICE DEPARTMENT | | | |
|---|---|---|---|
| Overruled with conditions * | | 8 | 0 |
| Overruled without conditions | | 0 | 0 |
| Concurred | | 0 | 1 |
| Withdrawn | | 0 | 0 |
| | **Total:** | 8 | 1 |

| FIRE DEPARTMENT | | | |
|---|---|---|---|
| Overruled with conditions * | | 0 | 0 |
| Overruled without conditions | | 0 | 0 |
| Concurred | | 0 | 0 |
| Withdrawn | | 0 | 0 |
| | **Total:** | 0 | 0 |

| HEALTH DEPARTMENT | | | |
|---|---|---|---|
| Overruled with conditions * | | 0 | 15 |
| Overruled without conditions | | 0 | 0 |
| Concurred | | 0 | 1 |
| Withdrawn | | 0 | 2 |
| | **Total:** | 0 | 18 |

## COMPARTIVE ANNUAL REPORT FISCAL YEARS 2003 TO 2004 AND 2004 TO 2005

| TAXI COMMISSION | 03/04 | 04/05 |
|---|---|---|
| Overruled with conditions * | 26 | 5 |
| Overruled without conditions | 2 | 1 |
| Concurred | 6 | 1 |
| Withdrawn | 0 | 1 |
| **Total:** | 34 | 8 |

| ENTERTAINMENT COMMISSION | | |
|---|---|---|
| Overruled with condition * | 0 | 0 |
| Overruled without condition | 0 | 0 |
| Concurred | 0 | 4 |
| Withdrawn | 0 | 2 |
| **Total:** | 0 | 6 |

| ART COMMISSION | | |
|---|---|---|
| Overruled with condition * | 1 | 0 |
| Overruled without condition | 0 | 0 |
| Concurred | 0 | 0 |
| Withdrawn | 0 | 0 |
| **Total:** | 1 | 0 |

| INTERDEPARTENT STAFF COMMITTEE ON TRAFFIC AND TRANSPORTATION | | |
|---|---|---|
| Overruled with condition * | 0 | 0 |
| Overruled without condition | 0 | 0 |
| Concurred | 0 | 0 |
| Withdrawn | 0 | 0 |
| **Total:** | 0 | 0 |

| URBAN FORESTRY | | |
|---|---|---|
| Overruled with condition * | 3 | 1 |
| Overruled without condition | 0 | 1 |
| Concurred | 6 | 1 |
| Withdrawn | 0 | 0 |
| **Total:** | 9 | 3 |

COMPARTIVE ANNUAL REPORT FISCAL YEARS 2003 TO 2004 AND 2004 TO 2005

## OTHER ACTIONS

| | 03/04 | 04/05 |
|---|---|---|
| Rehearings Withdrawn | 1 | 2 |
| Rehearings Granted | 6 | 2 |
| Rehearings Denied | 12 | 26 |
| **Total:** | 19 | 30 |
| Further Hearings | 23 | 47 |
| Site Inspections | 0 | 0 |
| Court Remands | 2 | 5 |
| **Total:** | 25 | 52 |
| **TOTAL OTHER ACTIONS** | **44** | **82** |
| Matters Pending | 23 | 38 |
| Appeals Not Accepted (Lack of Jurisdiction) | 15 | 27 |
| Appeals Accepted but Board had No Jurisdiction) | 3 | 20 |
| Appeals Accepted (Jurisdiction granted) | 12 | 15 |
| Appeals Continued at Hearings | 23 | 47 |
| **Total:** | 76 | 147 |
| Call Of The Chair | 6 | 7 |

*NOTE: A majority of appeals in this category are actually concurrences with the Department with only minor conditions. For example, any change in the amount of the penalty assessed for work done without a permit renders that decision in the "Overruled with conditions" column.

**NOTE: Additional appeals processed but no decision released during the fiscal year 2003-2004

***NOTE: Additional appeals processed but no decision released during the fiscal year 2004-2005

# PERFORMANCE MEASURES
Detail

Print | Help | Delete | Return to Summary

Dept: PAB — BOARD OF APPEALS

Program: BAH — APPEALS PROCESSING

Goal: 01 — Provide a fair and efficient administrative appeals process to the public

Measure: 01 — Percentage of cases decided within 75 days of filing (note change in wording)

Measure: Prev | Next

Type: Outcome

Value Format: Percent(1)

Name and phone number of person responsible for this measure: Victor Pacheco (415) 575-6887

| 2003-2004 | 2004-2005 | 2005-2006 | | | | 2006-2007 | |
|---|---|---|---|---|---|---|---|
| Actual | Actual | Target | July - Dec Actual | 12-Mo. Projected | 12-Month Actual | Target | Revised Target |
| 82.3% | 52.0% | 75.0% | 74.0% | 70.0% | | 75.0% | |

**Definition of Measure**

Hearings are scheduled within 45 days due to the efficiency of the process. Construction projects and business activities are delayed while the Board processes and decides appeals. The sooner appeals are heard by the Board, the less the delay caused by the process. Measure changed from 45 days to 75 days in 2/20/04. Prior year

**Data Collection Method and Location of Documentation**

Log and department files.

**Explanation of 2005-2006 6-Month Actual and Projection**

This % (74) is due to a new Board policy to hear cases even with only 4 out of 5 members present, and to only continue the matter if the 5th vote would make a difference. The projection of 70% contemplates the usual uptick in appeals during the spring, and thus an increased backlog of cases for the Board.

**Explanation of 2006-2007 Target (Original and Revised)**

**Explanation of 2005-2006 12-Month Actual**

**Department's Comments**

Several factors constrain the department from being able to schedule a hearing within 45 days so the measurement has been revised to within 75 days. CON: Change made in 2/20/04, please confirm proper actuals for prior years have been entered;

# PERFORMANCE MEASURES

Detail

Print | Help | Delete | Return to Summary

Measure: Prev | Next

| | | |
|---|---|---|
| Dept | PAB | BOARD OF APPEALS |
| Program | BAH | APPEALS PROCESSING |
| Goal | 01 | Provide a fair and efficient administrative appeals process to the public |
| Measure | 02 | Percentage of written decisions released within 15 days of final action (note change in wording) |
| Type | Outcome | |
| Value Format | Percent(1) | |

Name and phone number of person responsible for this measure:

Victor Pacheco (415) 575-6887

| 2003-2004 | 2004-2005 | 2005-2006 | | | | 2006-2007 | |
|---|---|---|---|---|---|---|---|
| Actual | Actual | Target | July - Dec Actual | 12-Mo. Projected | 12-Month Actual | Target | Revised Target |
| 92.2% | 83.0% | 90.0% | 93.0% | 90.0% | | 90.0% | |

**Definition of Measure**

The scheduling of hearings is at the beginning of the process and the distribution of the Board's Notice of Decision and Order is a the end. The goal is to always send out decisions as soon as possible following the board's final action on an appeal so that the public, project sponsors and businesses are only minimally delayed. Measurement

**Data Collection Method and Location of Documentation**

Log and department files.

**Explanation of 2005-2006 6-Month Actual and Projection**

This high % (93) is due to a departmental commitment to implement the Board's decisions in an expeditious manner, which benefits all parties involved. A target of 90% is reasonable because some decisions involve the submittal of paperwork by outside parties, which is beyond the control of staff.

**Explanation of 2006-2007 Target (Original and Revised)**

**Explanation of 2005-2006 12-Month Actual**

**Department's Comments**

To challenge the department and increase efficiency at the end of the appeal process, the measure has been revised from 30 days to 15 days. CON: Change made in 2/20/04, please confirm proper actuals for prior years have been entered.

# PERFORMANCE MEASURES

Detail

Print | Help | Delete | Return to Summary

Measure: Prev | Next

| | | |
|---|---|---|
| Dept | PAB | BOARD OF APPEALS |
| Program | XXX | NON PROGRAM |
| Goal | 01 | All city employees have a current performance appraisal |
| Measure | 01 | # of employees for whom performance appraisals were scheduled |
| Type | Input | |
| Value Format | Number(0) | |

Name and phone number of person responsible for this measure: Cathy Johnson (415) 575-6882

| 2003-2004 | 2004-2005 | 2005-2006 | | | | 2006-2007 | |
|---|---|---|---|---|---|---|---|
| Actual | Actual | Target | July - Dec Actual | 12-Mo. Projected | 12-Month Actual | Target | Revised Target |
| | | | 10000.0% | 10000.0% | | 10000.0% | |

**Definition of Measure**

New measure requested by Mayor on 8/15/05. This is the number of employees in a department for whom a performance appraisal is to be conducted. DHR policy is that all permanent and provisional employees must have an annual appraisal. For new employees, the first review shold be scheduled according to their applicable

**Data Collection Method and Location of Documentation**

New measure requested by Mayor on 8/15/05. This is the number of employees in a department for whom a performance appraisal is to be conducted. DHR policy is that all permanent and provisional employees must have an annual appraisal. For new employees, the first review should be scheduled according to their applicable probationary period. For other

**Explanation of 2005-2006 6-Month Actual and Projection**

All employees and the Dept. Head have been scheduled for performance appraisals.

**Explanation of 2006-2007 Target (Original and Revised)**

[Department to enter the total of number of applicable employees for FY06-07]

**Explanation of 2005-2006 12-Month Actual**

**Department's Comments**

# PERFORMANCE MEASURES

Detail

Print | Help | Delete | Return to Summary

Measure: Prev | Next

| | | |
|---|---|---|
| Dept | PAB | BOARD OF APPEALS |
| Program | XXX | NON PROGRAM |
| Goal | 01 | All city employees have a current performance appraisal |
| Measure | 02 | # of employees for whom scheduled performance appraisals were completed |
| Type | Output | |
| Value Format | Number(0) | |

Name and phone number of person responsible for this measure:

Cathy Johnson (415) 575-6882

| 2003-2004 | 2004-2005 | 2005-2006 | | | | 2006-2007 | |
|---|---|---|---|---|---|---|---|
| Actual | Actual | Target | July - Dec Actual | 12-Mo. Projected | 12-Month Actual | Target | Revised Target |
| | | | 8500.0% | 10000.0% | | 10000.0% | |

**Definition of Measure**

New measure requested by Mayor on 8/15/05. This is the number of applicable employees in a department for whom a performance appraisal was conducted amd completed during the fiscal year. "Completed" means an appraisal form has been filled out and is in the employee's personnel file. DHR policy is that all permanent and

**Data Collection Method and Location of Documentation**

[Department to describe data method and location]

**Explanation of 2005-2006 6-Month Actual and Projection**

All PCS and TEX employees have had their performance appraisals; there is one probationary employee, and her performance apprasisal will be done in May when the probation period is over. The Board did a performance appraisal of the Dept. Head on Feb. 15, 2006.

**Explanation of 2006-2007 Target (Original and Revised)**

Per the Mayor's direction, the target must be all applicable employees (100%). Use the figure from previous measure.

**Explanation of 2005-2006 12-Month Actual**

**Department's Comments**